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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/925,506	08/10/2001	Kenzo Chikanari	Q65833	4992

7590

01/31/2003

SUGHRUE, MION, ZINN, MACPEAK & SEAS  
2100 Pennsylvania Avenue, N.W.  
Washington, DC 20037

EXAMINER

NUTTER, NATHAN M

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 01/31/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/925,506		<b>Applicant(s)</b> CHIKANARI ET AL.	
	<b>Examiner</b> Nathan M. Nutter		<b>Art Unit</b> 1711	

**-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) ☐ Responsive to communication(s) filed on \_\_\_\_.

2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) ☒ Claim(s) 1-5 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-5 is/are rejected.

7) ☐ Claim(s) \_\_\_\_ is/are objected to.

8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) ☒ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All    b) ☐ Some \*    c) ☐ None of:

1. ☒ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) ☒ Notice of References Cited (PTO-892) ✓

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.

4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Specification***

A substitute specification including the claims is required pursuant to 37 CFR 1.125(a) because the Specification is not written in clear, concise idiomatic English.

A substitute specification filed under 37 CFR 1.125(a) must only contain subject matter from the original specification and any previously entered amendment under 37 CFR 1.121. If the substitute specification contains additional subject matter not of record, the substitute specification must be filed under 37 CFR 1.125(b) and must be accompanied by: 1) a statement that the substitute specification contains no new matter; and 2) a marked-up copy showing the amendments to be made via the substitute specification relative to the specification at the time the substitute specification is filed.

### ***Claim Rejections - 35 USC § 102/103***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mirabella et al, newly cited.

The reference to Mirabella et al teaches the manufacture of a polymer blend for the production of film-type materials that may comprise a copolymer of ethylene with an  $\alpha$ -olefin having 3 to 12 carbon atoms and "having a density of between 0.880 g/cc and 0.949 g/cc" (A-2) and a "melt index of between about 0.01 and about 100" (A-1) admixed with an "ethylene-vinyl acetate copolymer having a vinyl acetate content of at least about 28% by weight" (B-2). Note the Abstract and column 2 (lines 26-45). Further, note column 2 (line 48) to column 3 (line 15) for a teaching that the ethylene/ $\alpha$ -olefin copolymer is linear, therefore satisfying the equation of (A-3) and embracing the melt index of (B-1) for the ethylene/vinyl acetate copolymer, as herein claimed. In particular, note Example 3 at column 5 for a melt index for the EVA of 3.5.

The reference to Mirabella et al teaches essentially what is recited and claimed herein. The reference teaches the production of film structures which concept may embrace gloves or packaging (claims 2, 4 and 5). The reference uses essentially identical copolymers having identical characteristics as those recited and claimed herein. The patent fails to recognize the particular haze or gloss values as recited in instant claim 3, although those characteristics would certainly be present since the compositions are deemed to be equivalent. Further, although the reference fails to teach the particular "cold xylene-soluble portion" of the ethylene/ $\alpha$ -olefin copolymer, again it is asserted that because the blend composition appears to be identical in scope,

this characteristic, likewise, would be the same. As such, the instant claims would have been at least obvious, if not anticipated by the teachings of the reference to Mirabella et al.

The patent to Mollison, cited of interest, teaches the manufacture of a blend of an ethylene/ $\alpha$ -olefin copolymer with an ethylene/vinyl acetate copolymer, similar to the one as herein claimed. The reference fails to teach or suggest the variables (A-3) and (A-4). Note the Abstract and column 3 (lines 48 et seq.). The patent is not deemed to present a bar to the patentability of the instant claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 703-308-2443. The examiner can normally be reached on Monday-Friday 9:30 am to 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

A handwritten signature in black ink, appearing to read "Nathan M. Nutter". The signature is fluid and cursive, with the first name "Nathan" being larger and more prominent than the middle initial "M" and the last name "Nutter".

Nathan M. Nutter  
Primary Examiner  
Art Unit 1711

nmn  
January 26, 2003